

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

**IN THE MATTER OF:**

**EUGENE J. PLONKA,**

Complainant,

and

**GKN SINTER METALS, INC.,**

Respondent.

Charge No. 2002SA0040  
EEOC No. 21BA12040  
ALS No. 11902

**ORDER**

This matter coming before the Commission pursuant to a Recommended Order and Decision, the Complainant's Exceptions filed thereto, and the Respondent's Response to the Complainant's Exceptions.

The Illinois Department of Human Rights is an additional statutory party that has conducted state action in this matter. They are named herein as an additional party of record. The Illinois Department of Human Rights did not participate in the Commission's consideration of this matter.

**IT IS HEREBY ORDERED:**

1. Pursuant to 775 ILCS 5/8A-103(E)(1) & (3), the Commission has **DECLINED** further review in the above-captioned matter. The parties are hereby notified that the Administrative Law Judge's Recommended Order and Decision, entered on **January 22, 2010**, has become the Order of the Commission.

STATE OF ILLINOIS )

HUMAN RIGHTS COMMISSION )

**Entered this 28<sup>th</sup> day of April 2010**

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini

**STATE OF ILLINOIS**  
**HUMAN RIGHTS COMMISSION**

<b>IN THE MATTER OF :</b>	)	
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<b>EUGENE J. PLONKA,</b>	)	
<b>Complainant</b>	)	
	)	
<b>and</b>	)	<b>CHARGE NO.: 2002SA0040</b>
	)	<b>EEOC NO.: 21BA 12040</b>
	)	<b>ALS NO.: 11902</b>
<b>GKN SINTER METALS, INC.,</b>	)	
<b>Respondent</b>	)	

**RECOMMENDED ORDER AND DECISION**

This matter comes before the Commission following a public hearing that was conducted on July 28 and 29, 2004 at which both parties appeared and participated. Both parties filed post-hearing briefs and reply briefs. This matter is now ready for decision.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

**Statement of the Case**

Complainant filed his Charge No. 2002SA0040 against Respondent, GKN Sinter Metals, Inc., on July 28, 2001. The charge alleges that Complainant was terminated from his employment with Respondent due to discrimination based on his age, 56.

On October 10, 2002, the Department of Human Rights filed a complaint with the Commission on behalf of Complainant in which it alleged that Respondent discharged Complainant on April 25, 2001 due to his age, 56, in violation of Section 2-102(A) of the Illinois Human Rights Act. On November 12, 2002, Respondent filed its verified answer to the complaint. A discovery scheduling order was entered on January 16, 2003. A contentious discovery period was completed on or about July 10, 2003 and a schedule was set for the filing of dispositive motions. Respondent's Motion for Summary Decision was filed on October 2, 2003 and Complainant filed his response on November 5, 2003. Respondent's reply was filed

on December 5, 2003 and the motion was denied by order on December 30, 2003. The joint pre-hearing memorandum was filed on March 3, 2004 and the public hearing was initially scheduled to begin on May 5, 2004. After being postponed, the public hearing commenced on July 28, 2004 and concluded on July 29, 2004. With the briefing of the parties now being completed, this matter is now ready for decision.

### **Findings of Fact**

1. Complainant, Eugene J. Plonka, filed his Charge No. 2002SA0040 with the Illinois Department of Human Rights on July 28, 2001, alleging that Respondent, GKN Sinter Metals, Inc., terminated his employment on April 25, 2001 because of his age, 56.
2. Complainant was first employed by Respondent in 1983 and continued there until his discharge on April 25, 2001. At the time relevant to this complaint, Complainant was employed as a tool and die machinist by Respondent. He was the only employee of Respondent with the skill set of "tool and die maker" and his performance in this position was superior.
3. On April 18, 2001, Complainant worked the first shift (7:00 a.m. to 3:30 p.m.) at his assigned work station. Prior to that date, Complainant had not been disciplined by Respondent for any reason during his tenure with the company.
4. The employee scheduled to replace Complainant on the second shift was John McGinness. On April 18, 2001, McGinness was 48 years old. In the weeks leading up to the events of April 18<sup>th</sup>, Complainant had reported several instances of harassing or threatening behavior by McGinness directed at Complainant. No investigation or disciplinary action took place as a result of these reports by Complainant.
5. When McGinness arrived at the work area shared by the two men on April 18, 2001, he began to "run his mouth" at Complainant, with whom he had been on

bad terms for some time. His comments included unflattering references to Complainant's spouse, Complainant's finances, his assertion that he knew the location of Complainant's residence and an allegation that Complainant was reworking a tool on which McGinness had been working. Further details of the verbal exchanges between the men are included below and are incorporated by reference in this paragraph.

6. After moving to the office of Syd Willett, Complainant's supervisor, the two men were required to wait while Willett finished working with another employee. While waiting, McGinness continued to direct comments to Complainant and Complainant lunged across the small office toward McGinness, making physical contact with him. At no time did McGinness strike or otherwise make contact with Complainant. Willett intervened and contacted representatives of Human Resources to determine the course of action to be taken.
7. Shortly after the incident at the work station and manager's office, and at the request of Human Resources representative Andrea Singer, McGinness's alcohol blood level was measured at 0.042, about half of the generally accepted measure of intoxication of 0.08.
8. Both men were immediately suspended pending the outcome of an internal investigation.
9. When the investigation was completed on or about April 25, 2001, Complainant's employment was terminated and McGinness was suspended without pay for 30 days and placed on six months probation as well as being referred to the employee assistance program.
10. This incident was the second time alcohol was involved in a disciplinary action by Respondent against McGinness. After the first incident in 1999, McGinness's personnel file included the notation that he would be terminated if he was

suspected of being intoxicated and refused to take an alcohol level test or if he took the test, and the result was over 0.08; neither of these conditions was satisfied in the aftermath of the April 18<sup>th</sup> incident. Consequently, Susan Quanz, the Human Resources decision maker, determined that McGinness could not be terminated under the circumstances of this incident.

### **Conclusions of Law**

1. Complainant is an "aggrieved party," and Respondent is an "employer" as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5/103(B), 5/2-101(B)(b) and 2-102(D).
2. The Commission has jurisdiction over the parties and the subject matter of this action.
3. Respondent was Complainant's employer from 1983 through April 25, 2001.
4. Complainant established a *prima facie* case of age discrimination and Respondent articulated a legitimate business reason for terminating the employment of Complainant on April 25, 2001.
5. Complainant did not establish by a preponderance of the evidence that Respondent's legitimate business reason for his termination was a pretext for age discrimination.
6. There is no evidence in the record indicating that the decision by Respondent to terminate Complainant was motivated by his age.
7. The charge and complaint in this matter should be dismissed with prejudice.

### **Discussion**

#### **Complainant's Claim of Age Discrimination – The Background**

Complainant was first employed by Respondent in 1983 and continued to be employed by the company until April 25, 2001. He was a tool and die machinist for Respondent, a highly skilled, specialized position in support of the manufacturing process. He was the only person

employed at this facility of Respondent possessing this skill at the time of the incident described here. Prior to the incident that took place on April 18, 2001, Complainant had never been disciplined for any reason by Respondent and was highly regarded for the work he accomplished on behalf of his employer. Complainant worked the regular day shift. At the time relevant to this complaint, Complainant was age 56.

On April 18, 2001, Complainant's shift ended at about 3:30 p.m. The person working in that area for the next shift was John McGinness, who was then 48 years old and had been employed by Respondent for about three years. McGinness was disciplined by Respondent for attendance related issues on two occasions and had been admonished for reporting to work in an intoxicated state in 1999. In the weeks leading up to April 18<sup>th</sup>, Complainant had told management about several occasions when McGinness allegedly made inappropriate remarks to him. No action was taken against McGinness for these actions. When he arrived at the work area on April 18<sup>th</sup>, McGinness approached Complainant from the back and startled him by saying "boo!" McGinness apparently had a long-held belief that Complainant did not respect his work product and that afternoon, found Complainant handling a tool which McGinness had made. McGinness accused Complainant of "reworking" the tool, while Complainant asserted he was only "polishing" the tool.

This initial conflict escalated into comments by McGinness that were more personal. Among the comments made by McGinness were: "I know all about you. I know what you do and where you live. I know what you did to me. I know how much money you make." Tr. 56. Complainant was concerned about the aggressive nature of the comments made by McGinness and suggested that they leave the tool room, where they were alone. Complainant then suggested that the two of them go to the office of Syd Willett, Technical Service Manager and the immediate supervisor of Complainant and, at various times, the supervisor of McGinness, although not at the time of this incident.

When the men arrived at the office, Mr. Willett was speaking with another employee and he indicated that he would finish that conversation before meeting with the two men. The men remained in the small office while waiting, with Complainant, who initially was seated, only a few feet from McGinness, who was standing. McGinness again made certain remarks in a low, mumbling tone directed at Complainant: "You'd be surprised what I know about you, how much money you make" and "you'd be surprised what I know about your wife's (private parts)." Tr. 64.

When the latter remark was made, Complainant got up and began to move toward McGinness. As the distance was quite short between the two men, it only took a second or two for Complainant to reach McGinness. Complainant then grabbed McGinness by the collar of his shirt and pushed him backward. It is unclear whether McGinness was pushed into the wall, but enough force was applied against him to cause him to move backward toward the wall.

When Mr. Willett observed the aggressive action by Complainant, he jumped up and began to move toward the men, shouting "hey, quit that!" When Mr. Willett reached the two men, he knocked Complainant's hands away from McGinness and the physical contact ended. McGinness did not raise his hands or otherwise defend himself or strike out at Complainant and Complainant did not otherwise strike or maintain any other contact against McGinness.

McGinness shouted, "He is doing it to me in front of everybody!" Trans. 217. All of those in Mr. Willett's office then moved outside of the supervisor's office and Mr. Willett was standing between the two men. Mr. Willett then noticed the smell of alcohol coming from McGinness. After this discovery, Mr. Willett called Andrea Singer, the local representative of Human Resources for Respondent, and requested that McGinness be tested for the presence of alcohol in his system. Ms. Singer then took over responsibility for investigating the incident and determining the consequences for the two men.

At the direction of Susan Quanz, Respondent's regional human resources director, Ms. Singer immediately suspended both Complainant and McGinness and required McGinness to submit to testing for alcohol. A witness list was compiled and statements were taken from

McGinness and Complainant. Ms. Singer also interviewed other witnesses and passed the results of the investigation to Ms. Quanz and other decision makers at the corporate level. It was their decision to terminate Complainant for fighting with McGinness and to suspend McGinness for 30 days, refer him to the employee assistance program and place him on six months probation. The decision to terminate Complainant's employment was ratified by the peer review committee at the plant.

Ms. Quanz credibly testified that the decision to terminate Complainant was made due to Respondent's corporate policy of "zero tolerance" for violence in the workplace. Such a policy is not uncommon in the present-day American workplace. McGinness was not terminated because he did not engage in any aggressive contact with Complainant and the investigation was unable to substantiate that McGinness had verbally threatened Complainant. However, he was suspended, referred and placed on probation because he violated Respondent's policy regarding abuse of substances such as alcohol.

The result of McGinness's blood alcohol test was a 0.042, which is less than the legal level of 0.08 for intoxication but does indicate the presence of alcohol in his system. Ms. Quanz acknowledged that McGinness was disciplined in 1999 for suspected intoxication, but this was not a factor in the decision reached in the present incident because the earlier incident occurred prior to the adoption of the stricter provisions in the employee handbook applicable to intoxication that were in effect at the time of the incident described in this complaint.

Both Complainant and McGinness were over the age of 40, the protected group defined for age discrimination – Complainant was 56 at the time of the incident and McGinness was 48. The *prima facie* case for age discrimination follows the general pattern established by the United States Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). That is, 1) the complainant is a member of the protected group; 2) he was performing in a satisfactory manner; 3) he was discharged despite the adequacy of his work; and, 4) a similarly situated employee who was not a member of the protected group was not discharged. Folbert v.



Department of Human Rights, 303 Ill.App.3d 13, 25, 707 N.E.2d 590, 236 Ill.Dec. 463 (1<sup>st</sup> Dist. 1999). In this case, the first three elements of the *prima facie* case must be found in favor of Complainant in accord with the undisputed facts presented at the public hearing. In fact, with regard to elements 2 and 3, representatives of Respondent indicated that Complainant performed his work in a superior fashion and that after his discharge, it was difficult for them to complete the work that would have been assigned to him.

The dispute in this case revolves around element 4, “that a similarly situated employee who was not a member of the protected group was not discharged.” *Id.* In the early decisions made under the Illinois Human Rights Act, age discrimination could only be found if the similarly situated person was not in the protected group. Then, the Illinois Appellate Court issued a decision that established that the similarly situated person also could be in the protected group. Anderson v. County of Cook, Oak Forest Hospital, 314 Ill.App.3d 35, 51, 731 N.E.2d 371, 246 Ill.Dec. 843 (1<sup>st</sup> Dist. 2000). In Anderson, the complainant was age 61 at the time of her discharge and her replacement on the job was age 48. But while the court found that the fact that the replacement was also in the protected group satisfied the fourth element of the *prima facie* case, additional evidence that other employees not in the protected class were also treated better than the complainant was required to firmly establish by a preponderance of the evidence that Oak Forest Hospital engaged in age discrimination by terminating the employment of complainant Anderson.

In the present case, Complainant is likewise able to complete his *prima facie* case even though McGinness is also in the protected class. As is required under the McDonnell Douglas method, Respondent then must articulate (but not prove) a legitimate business reason for its action in discharging Complainant. Accordingly, Respondent states that it discharged Complainant because he violated its “zero tolerance” policy regarding violence in the workplace. Complainant then must prove that this reason is a pretext to conceal the alleged discriminatory purpose of the discharge based on his age. Pursuant to this requirement, Complainant asserts

that Respondent meted out a much less rigorous punishment to McGinness, a younger person, even though McGinness was arguably an active (although he did not engage in physical force against Complainant) participant in the incident recounted above. The additional fact that McGinness was also under the influence of alcohol (although not legally intoxicated) at the time of the incident is highlighted by Complainant to indicate an increased level of culpability on the part of McGinness, especially in light of his past discipline for a similar offense.

But the purpose of the inquiry prompted by the complaint filed on behalf of Complainant in this case is not to review the business decisions of Respondent regarding the continued employment of Complainant and McGinness to determine if those decisions were in the best interests of the company, or even to determine if they were just in an abstract sense. Instead, the relevant inquiry is to determine if Respondent unlawfully discharged Complainant because of his age. In this regard, the record in this case simply does not include any evidence, direct, circumstantial or even implied, that this Respondent held any age-related animus against Complainant (or anyone at the plant). There is no testimony or other evidence that Respondent sought to purge its ranks of older employees or that other older employees were being discharged on flimsy grounds. There are no alleged statements by management that the workforce needed to become leaner, meaner – or younger. There is no history to indicate that Respondent wanted to make a change in the tool and die function by getting rid of older employees.

It can be debated whether the business decisions made by this Respondent with regard to both Complainant and McGinness were fair in light of all of the facts or were even in its best interests (a more experienced employee with a superior performance record was discharged and the employee with performance issues and a likely alcohol abuse problem was retained). This case may also point out the potential for unbalanced outcomes due to blind adherence to “zero tolerance” policies. But for the purpose of enforcing the age discrimination provisions of the Illinois Human Rights Act, the coincidental fact that the victim of Complainant’s attack was a

younger man who was not punished as severely as Complainant in the aftermath of the incident falls far short of establishing age discrimination by Respondent in this case.

**Recommendation**

It is recommended that the complaint and charge in this matter be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

ENTERED:

January 22, 2010

BY: \_\_\_\_\_

DAVID J. BRENT  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION